

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGITA DORNAY, *et al.*,

Plaintiffs,

v.

KING COUNTY SHERIFF, *et al.*,

Defendants.

Case No. C05-0909L

ORDER DENYING MOTION
FOR RECONSIDERATION;
RENOTING MOTION TO AMEND

This matter comes before the Court on a motion filed by plaintiffs Margita Dornay and Robert Noe (Dkt. #39) for reconsideration of the Court's order dismissing all of their claims except for outrage against individual defendants David Reichert, Robin Fenton, and Cliff Sether. (Dkt. #38, the "dismissal order"). The dismissal order explained that plaintiffs' amended complaint did not give defendants fair notice of plaintiffs' civil rights claims or the grounds on which they rest, and it did not satisfy the requirements of Fed. R. Civ. P. 8(a). The dismissal order also stated that with the exception of the outrage claim, the amended complaint did not contain sufficient facts or legal allegations to support the state law claims. Based on the fact that plaintiffs' proposed amendments to the complaint would be futile, the Court denied their motion to amend. (Dkt. #37).

ORDER DENYING MOTION
FOR RECONSIDERATION - 1

1 Plaintiffs timely filed this motion for reconsideration requesting that the Court vacate the
2 dismissal order and modify its order denying plaintiffs' motion to amend their complaint
3 to allow them to file a second amended complaint.

4 Plaintiffs allege that the dismissal order includes manifest error in that the Court
5 applied a heightened pleading standard to their Section 1983 claim. The dismissal order,
6 however, followed Ninth Circuit precedent rejecting a heightened pleading standard, and
7 instead applied the correct notice pleading standard. (Dkt. #38 at p. 3). The Court found
8 that plaintiffs' proposed amended complaint did not meet that standard, primarily because
9 plaintiffs did not state which constitutional rights were allegedly violated. Plaintiffs have
10 not shown manifest error in that finding.

11 Plaintiffs also allege that the Court erred in considering defendants' argument that
12 plaintiffs failed to identify a specific constitutional violation because it was raised for the
13 first time in defendants' reply brief in support of their motion to dismiss. However, the
14 Court subsequently permitted plaintiffs to move to file an amended complaint, and they
15 did so. Defendants were not estopped from alleging deficiencies in the amended
16 complaint, and they realleged the constitutional violation deficiency in their response to
17 plaintiffs' motion to amend their complaint. (Dkt. #30). Plaintiffs then had an
18 opportunity to respond to that argument in their reply.¹ No manifest error or injustice
19 occurred.

20 Plaintiffs seek permission to file their proposed second amended complaint to
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22 ¹ Plaintiffs also allege that if defendants had raised the lack of a constitutional
23 violation in their motion to dismiss, plaintiffs could have cured the deficiency in their
24 first amended complaint. This argument, however, ignores the fact that plaintiffs moved
25 to amend their complaint and filed their first amended complaint *after* defendants filed
26 their reply.

1 include an allegation that the individual defendants violated their 14th Amendment right
2 to substantive due process, and to include additional information regarding their state law
3 claims against the individual defendants. Motion for Reconsideration at p. 7. Plaintiffs'
4 request to file that pleading is a new request for relief; therefore, the Court will treat it as
5 a motion to amend the pleadings.

6 For the foregoing reasons, the Court DENIES plaintiffs' motion for
7 reconsideration (Dkt. #39). The Clerk of the Court is directed to renote plaintiffs' motion
8 for reconsideration (Dkt. #39) for consideration on December 14, 2005 as a motion to
9 amend the complaint. Defendants' response and plaintiffs' reply shall be due in
10 accordance with Local Rule 7(d)(2).

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12 DATED this 2nd day of December, 2005.

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15 Robert S. Lasnik
16 United States District Judge
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